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21 March 2021

## **Letter in Support of Reform Legislation on Solitary Confinement in Connecticut**

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Honorable Committee Members:

I write to advise this Committee about the status of solitary confinement under international human rights law and to express my strong support for the passage of S.B. 1059 (“An Act Concerning the Correction Accountability Commission, the Office of the Correction Ombuds, the Use of Isolated Confinement, Seclusion and Restraints, Social Contacts for Incarcerated Persons and Training and Workers’ Compensation Benefits for Correction Officers”) (hereinafter “the PROTECT Act”).

As the former United Nations (UN) Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (2010-2016), I investigated and reported on issues involving torture worldwide. I examined some of the most egregious human rights violations around the globe—acts that reflect a denial of basic human rights. In my capacity as Special Rapporteur, I examined the global practice of solitary confinement under the framework of international prohibition of torture and ill-treatment, and provided recommendations to all nations regarding the use of solitary confinement.

During my mandate, I also became keenly aware of a lack of data and significant gaps in knowledge about the global practice of solitary confinement. Accordingly, the Anti-Torture Initiative co-authored a study of solitary confinement regulations and practices in 26 countries and 35 jurisdictions around the world, in collaboration with the Cyrus R. Vance Center for International Justice and Weil, Gotshal, and Manges LLP.<sup>1</sup> Phase two of the study, which analyzes the solitary confinement practices in 22 additional jurisdictions around the world and 6 states within the United States, is nearing completion.

I have also previously worked closely on the use of solitary confinement units in New York’s prisons and detention centers, and participated in civil society support for the HALT Bill to limit

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<sup>1</sup> See ANTI-TORTURE INITIATIVE, CTR. FOR HUMAN RIGHTS & HUMANITARIAN LAW, AM. UNIV. WASH. COLL. OF LAW, CYRUS R. VANCE CTR. FOR INT’L JUSTICE, & WEIL, GOTSHAL & MANGES LLP, SEEING INTO SOLITARY: A REVIEW OF THE LAWS AND POLICIES OF CERTAIN NATIONS REGARDING SOLITARY CONFINEMENT OF DETAINEES (2016), [https://www.weil.com/~media/files/pdfs/2016/un\\_special\\_report\\_solitary\\_confinement.pdf](https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf).

the use of solitary confinement in that State. I have also rendered expert testimony on the international law standards regarding solitary confinement in *Ashker v. Brown*, a class action litigation in federal courts of California regarding the use of solitary confinement as a means of prison administration in that State. The lawsuit was settled and the State agreed to release 90% of the tens of thousands of prisoners that were held in prolonged or indefinite solitary confinement, and to amend prison regulations so that they drastically reduce its use in the future.<sup>2</sup> I was also an expert witness in *Shoatz v. Wetsel*, a single-plaintiff lawsuit seeking damages for Mr. Shoatz's isolation lasting thirty years. That case was also settled with the State paying compensation to Russell Maroon Shoatz. In both cases, I interviewed plaintiffs and inspected premises used for solitary confinement before I rendered my expert testimony.

Outside of the United States, I participated as an expert witness in four class action lawsuits challenging the use of solitary confinement in Canada.<sup>3</sup> These matters resulted in appellate-level decisions, based on international standards,<sup>4</sup> requiring the government to reform existing laws to address the harms of solitary confinement in federal prisons. I have also presented briefs *amicus curiae* on similar matters before the Supreme Court of Brazil and the European Court of Human Rights and expert testimony before the Second Congressional Hearing on Solitary Confinement "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences," in Washington, D.C.

In 2011, I conducted a comprehensive examination of solitary confinement and published my findings in a report to the UN General Assembly (A/66/28). That report applied the definition included in the *Istanbul Statement on Solitary Confinement* of 9 December 2007 (a document issued by legal and medical specialists at the International Psychological Trauma Symposium) and consequently defined solitary confinement as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. Based on my research, I later presented another thematic report at the 68th session of the UN General Assembly in 2013, where I recommended to all nations that the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs) be amended to prohibit the use of solitary confinement for prolonged or indefinite periods, and prohibit the practice in all circumstances against certain vulnerable populations, including juveniles and persons with mental and physical disabilities.

In December 2015, the UN General Assembly unanimously approved the SMRs, now named the "Nelson Mandela Rules" in honor of President Nelson Mandela, who spent decades in prison, much of it in solitary confinement, during Apartheid-era South Africa. The Nelson Mandela

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<sup>2</sup> In January 2019, the court found that constitutional violations were continuing to occur and ordered further monitoring.

<sup>3</sup> *British Columbia Civil Liberties Ass'n v. Canada (Attorney General)*, 2018 BCSC 62; *Brazeau v. Attorney General (Canada)*, 2019 ONSC 1888; *Canadian Civil Liberties Ass'n v. Canada (Attorney General)*, 2019 ONCA 243; *Reddock v. Canada (Attorney General)*, 2019 ONSC 5053.

<sup>4</sup> See *infra* discussion of the Mandela Rules.



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Rules were negotiated for the previous three years by States, independent experts, and civil society organizations in consultations hosted by the UN Organization on Drugs and Crime (UNODC); my Rapporteurship and I participated actively in those discussions. In the new version, they outline minimum standards regarding fundamental issues such as accommodation, medical services, discipline and punishment, and contact with the outside world. Importantly, the Nelson Mandela Rules incorporated my findings and recommendations from the 2011 report regarding solitary confinement, and they ban prolonged and indefinite solitary confinement and prohibit its use against certain vulnerable populations in Rules 43 through 45. While not strictly binding, the Nelson Mandela Rules are regarded by all countries as setting universal minimum standards, and are the key framework used by monitoring and inspection mechanisms.

The Nelson Mandela Rules define prolonged solitary confinement as any period of solitary confinement in excess of 15 days. This definition was based on the large majority of scientific studies, which indicate that after 15 days of absolute isolation harmful psychological effects often manifest and may even become irreversible. Even if isolation is somehow mitigated, there should still be a maximum term beyond which solitary confinement is considered prolonged and is therefore categorically banned. Research on the effects of isolation indicate that the practice can lead to the development of certain psychotic disorders, including a condition known as “prison psychosis,” the symptoms of which include anxiety, depression, anger, cognitive disorders, distortions of perception, paranoia, and psychosis and self-inflicted injuries. For these reasons, I concluded in my 2011 report that any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment. Furthermore, due to the lack of witnesses and the solitude in which such practices are carried out, solitary confinement may give rise to other acts of torture or ill-treatment. Short-term isolation may be legitimate, but it should also be regulated and surrounded with due process and health-care safeguards.

My successor as UN Special Rapporteur, Nils Melzer, has built on this work and drawn particular attention to the concerning conditions of confinement in Connecticut. As he said in a statement last year, the practices of the Connecticut Department of Corrections (DOC) are cause for considerable alarm:

The DOC appears to routinely resort to repressive measures, such as prolonged or indefinite isolation, excessive use of in-cell restraints and needlessly intrusive strip searches. There seems to be a State-sanctioned policy aimed at purposefully inflicting severe pain or suffering, physical or mental, which may well amount to torture.

. . . These practices trigger and exacerbate psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities.

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. . . The severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.<sup>5</sup>

The Special Rapporteur concluded, and I affirm, that “[t]his deliberate infliction of severe mental pain or suffering may well amount to psychological torture,” in violation of international law and the Mandela Rules.<sup>6</sup>

Connecticut’s prison system should be commended for taking a number of positive steps on solitary confinement in the last few years, including DOC’s stated intention to close Northern Correctional Institute. However, without concrete law to codify these steps, Connecticut’s prison system could easily return to its past practices of confining prisoners in isolation for months, years, and even decades at a time. Furthermore, the prison system may revert to using solitary confinement against vulnerable populations such as juveniles and persons with serious mental and physical disabilities. Finally, without law to codify due-process safeguards, prisoners may be subjected to solitary confinement for minor, nonviolent rule violations. Such practices would violate the international obligations of the United States.

I strongly support the passage of the PROTECT Act. The PROTECT Act calls for a prohibition on extreme isolation and the use of abusive restraints on individuals who are incarcerated. In addition, the bill guarantees at least 8 hours out of cell per day and guaranteed opportunities for social contact with loved ones. The bill also takes up an important part of the Mandela Rules by creating an independent office of ombuds as well as a Corrections Advisory Council, which will include formerly incarcerated people.

The PROTECT Act reflects both safe and effective prison policy and respect for human rights, and statutorily aligns Connecticut with international law and human rights standards. This legislation will help codify reasonable limits for the use of solitary confinement in Connecticut prisons and jails and ensure that people held there are guaranteed the necessary protections against torture and ill-treatment.

I attach the following supporting documents:

1. My expert testimony in *Ashker v. Brown*;
2. The Istanbul Statement on Solitary Confinement;
3. My report on Solitary Confinement to the UN General Assembly;

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<sup>5</sup> *United States: Prolonged Solitary Confinement Amounts to Psychological Torture, Says UN Expert*, OFF. OF THE HIGH COMM’R, UNITED NATIONS (Feb. 28 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633>.

<sup>6</sup> *Id.*



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4. The 'Nelson Mandela Rules' (UN Standard Minimum Rules on the Treatment of Prisoners);
5. My testimony to the US Congressional Hearing on Solitary Confinement.

I am grateful to the Honorable Committee Members for their attention to this matter.

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